

# Staff Summary Report

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**Council Meeting Date:** 06-23-04

**Agenda Item Number:** 12

**SUBJECT:** Resolution No. 2004.68 authorizing the Mayor to execute the Second Amendment to the Development Agreement between the City of Tempe and America West Holdings Corporation.

**DOCUMENT NAME:** 20040623casv04 AMERICA WEST AIRLINES (0404-03-06)

**SUPPORTING DOCS:** No

**COMMENTS:** Request approval of Resolution 2004.68 authorizing the Mayor to execute the Second Amendment to the Development Agreement between the City of Tempe and America West Holdings Corporation to extending the dates for Phase Two construction by two years.

**PREPARED BY:** Marlene A. Pontrelli, City Attorney (Ext. 8120)

**REVIEWED BY:** Will Manley, City Manager (Ext. 8884)

**LEGAL REVIEW BY:** Marlene A. Pontrelli, City Attorney (Ext. 8120)

**FISCAL NOTE:** None.

**RECOMMENDATION:** Authorize the Mayor to execute the Second Amendment to the Development Agreement.

**ADDITIONAL INFO:** The Phase Two Commencement Date as set forth in paragraph 2.1.2 was previously extended to February 18, 2006. The Second Amendment extends the date to February 18, 2008. In addition, the Certificate of Occupancy dates set for the Development Agreement are also extended by an additional two years. The amendment further provides that America West Holdings will work with the City and a developer chosen by the City to redevelop the Hayden Ferry Flour Mill so that a coordinated effort with respect to the development of both properties can take place.

**RESOLUTION NO. 2004.68**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF TEMPE AUTHORIZING THE MAYOR TO  
EXECUTE THE SECOND AMENDMENT TO THE  
AMERICA WEST HOLDINGS CORPORATION  
AGREEMENT.**

WHEREAS, the City of Tempe and America West Holdings Corporation have previously entered into a Development Agreement dated February 18, 1998, and a First Amendment dated September 12, 2002 setting for certain performance schedules with respect to the commencement of Phase Two construction as defined in the Development Agreement; and

WHEREAS, the parties are now desirous of extending the dates set forth in the Development Agreement, as amended, by an additional two years in order to give the parties an opportunity to work together to coordinate development on the Phase Two site as well as the Hayden Ferry Flour Mill site currently owned by the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor is authorized to execute the Second Amendment to the America West Airlines Holdings Corporation on file with the Clerk's office.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

# 12  
6/23/04

*When recorded, return to:*  
City of Tempe  
31 East Fifth Street  
Tempe, Arizona 85281  
Attention: City Clerk

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SECOND AMENDMENT TO  
DEVELOPMENT AGREEMENT

[AMERICA WEST AIRLINES CORPORATE HEADQUARTERS]  
C97-250(A)

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This Second Amendment to Development Agreement (the "Amendment") is made and entered into as of the 23rd day of June, 2004, by and between the City of Tempe ("City"), an Arizona municipal corporation and a political subdivision of the State of Arizona, and America West Holdings Corporation ("AWH"), a Delaware corporation.

WITNESSETH:

WHEREAS, on February 18, 1998, the parties executed a Development Agreement intended to achieve the redevelopment of a portion of the University Hayden Butte Redevelopment Area I, including the construction in phases of the corporate headquarters of America West Airlines, a commercial office, and retail project. Certain critical dates are set forth in the Development Agreement which established timelines for the obligations and rights of the parties. The Development Agreement was designated as No. 97-250 and was thereafter recorded on February 26, 1998, as Instrument No. 98-0147245 in the official records of the Maricopa County, Arizona, Recorder's Office. The Development Agreement was amended by the parties pursuant to that certain First Amendment to Development Agreement dated September 12, 2002, which was thereafter recorded on September 24, 2002, as Instrument No. 2002-0978976 in the official records of the Maricopa County, Arizona, Recorder's Office. Such Development Agreement, as so amended, is hereinafter referred to as the "Development Agreement".

AGREEMENT:

NOW, THEREFORE, in consideration of the presents and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as set forth below:

1. The "Phase Two Commencement Date" set forth in paragraph 2.1.2 of the Development Agreement shall be February 18, 2008.

2. The dates for receipt of AWH's certificate of occupancy for the Phase Two Improvements and for a reduction of payments by the City as set forth above in paragraph 2.2.8.1 of the Development Agreement, are extended by two years as follows: any reference to February 18, 2005, shall now be February 18, 2007; any reference to February 18, 2006, shall now be February 18, 2008; and any reference to February 18, 2007, shall now be February 18, 2009.

3. The Phase Two Property, the Phase Three Property and the Hayden Flour Mill Retail Project lie in close proximity to each other along Mill Avenue in Tempe, Arizona. The parties recognize that where it is feasible, it will be in their mutual best interests to integrate the design and development of their respective properties. Accordingly, the parties each hereby agree to use good faith efforts to communicate, cooperate, and work with each other in the future planning and redevelopment of the Phase Two Property and the Phase Three Property, on the one hand, and the Hayden Flour Mill Retail Project, on the other hand. The foregoing shall not be deemed or construed to prohibit either party from developing its property without the consent of the other party.

4. Except as expressly modified by this Amendment, (a) any defined term used in this Amendment shall have the meaning given to it in the Development Agreement; (b) the execution of this Amendment shall not be deemed a waiver of any claim or right existing in favor of the parties; and (c) all other terms and conditions of the Development Agreement are and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

AMERICA WEST HOLDINGS CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF TEMPE,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Name: Neil G. Giuliano  
Title: Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
CITY ATTORNEY

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ACKNOWLEDGEMENT BY CITY OF TEMPE

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STATE OF ARIZONA     )  
                                      ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by Neil G. Giuliano, who acknowledged himself to be the Mayor of the City of Tempe, an Arizona municipal corporation, and, in such capacity and being fully authorized to do so, executed the foregoing instrument for the purposes contained therein on behalf of such entity.

\_\_\_\_\_  
Notary Public

Notary Seal:

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ACKNOWLEDGEMENT BY AMERICA WEST HOLDINGS CORPORATION

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STATE OF ARIZONA     )  
                                      ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by W. Douglas Parker, who acknowledged himself to be Chairman, President and CEO of America West Holdings Corporation, a Delaware corporation, and, in such capacity and being fully authorized to do so, executed the foregoing instrument for the purposes contained therein on behalf of such entity.

\_\_\_\_\_  
Notary Public

Notary Seal: